No. 89-823

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

DONALD M. LAYNE AND LAURA J. LAYNE,
Petitioners,
vs.
COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND CALIFORNIA COASTAL COMMISSION
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

(1) Whether petitioners' just compensation claim was properly dismissed on ripeness grounds, given their failure to submit even one meaningful application for the development of their property.

(2) Whether, in rejecting petitioners' claim that the state statute generally describing the inland boundaries of the California Coastal Zone is unconstitutionally vague, the court below properly concluded that any ambiguity in the statute was eliminated by the Legislature's incorporation by reference of maps precisely defining the location of this boundary.

(3) Whether petitioners' equal protection challenge to Measure A was properly dismissed on ripeness grounds, given the trial court's discretionary authority to refuse to consider applications for declaratory relief when a declaration is not "necessary or proper at the time under all the circumstances" (Cal. Code Civ. Pro. § 1061).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutions

Codes and Statutes

Miscellaneous Authorities

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents State of California and California Coastal Commission respectfully request that this Court deny the petition for writ of certiorari seeking review of the California Court of Appeal's unpublished opinion in *Layne v. County of San Mateo,* No. A041769.

JURISDICTION

Petitioners invoke the jurisdiction of this Court under 28 U.S.C. §1257 (2) and (3). Jurisdiction exists, if at all, however, only under 28 U.S.C. §1257(a) (formerly §1257(3)), pertaining to writs of certiorari, the old section authorizing appeal (former § 1257(2)), having been eliminated by the Supreme Court Case Selections Act (Public Law 100-352), which took effect on September 25, 1988. 1988 U.S. Code Cong. and Admin. News, p. 766.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the Fifth and Fourteenth Amendments to the United States Constitution, sections 17 and 30103 of the California Coastal Act of 1976, and the local initiative ordinance known as Measure A, all of which are cited by petitioners, this case involves the Planned Agricultural District or "PAD" zoning ordinance enacted by the County of San Mateo in furtherance of the Coastal Act. The key provisions of this ordinance are reprinted in the Appendix to this brief.

STATEMENT OF THE CASE

A. Proceedings Below

The complaint filed by petitioners Donald M. and Laura J. Layne, on July 29, 1987, against respondents, County of San Mateo (County), State of California, and the California Coastal Commission (Commission) includes three claims. The first, a claim for damages in inverse condemnation, alleges that the regulations governing development in the San Mateo coastal zone so restrict petitioners' ability to develop their property as to accomplish a taking in violation of the "Just Compensation" Clause (see U.S. Const. 5th & 14th Amends.; Cal. Const., art. I, § 19). (CT 1-3. [1]) The second seeks a declaration that the Laynes' property is not located in the coastal zone and so is not subject to the challenged regulations. (CT 3-5.) The third, also for

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1. The initials "CT" refer to the "Joint Appendix In Lieu of Clerk's Transcript" filed in the Court of Appeal.

declaratory relief, contains a conclusory allegation challenging the constitutionality of the entirety of both the San Mateo Local Coastal Plan and Measure A on vagueness grounds and further alleges that Measure A violates a number of other statutory and constitutional provisions. (CT 6-8). [2/]

On March 4, 1988, the superior court granted a summary judgment in favor of respondents, dismissing petitioners' first and third causes of action on ripeness grounds, and the second on the merits, which judgment the petitioners promptly appealed. (CT 528, 565, 589.)

In an unpublished opinion filed May 30, 1989, the Court of Appeal for the First Appellate District, Division Three concluded that "[t]he trial court properly granted respondents' motion[s] for summary judgment on all three causes of action" and affirmed the judgment in its entirety. (Pet.App. at 31.) The court denied a timely petition for rehearing on June 29, 1989. Thereafter, on August 23, 1989, the Supreme Court of California denied a petition for review and, on November 21, 1989, petitioners timely filed their petition for writ of certiorari in this Court.

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2. Petitioners' equal protection challenge to Measure A has been treated as if were included in their third cause of action, although it is not. This claim was raised for the first time in the trial court in their opposition to respondents' motions for summary judgment. (See CT 214.) Under California law, a court is entirely justified in refusing to entertain such a delayed claim. See, e.g., *Cullincini v. Deming*, 53 Cal.App.3d 908, 915 at n. 5 (1975); *Keniston v. American Nat'l Ins. Co.*, 31 Cal.App.3d 803, 812 (1973), *Alameda Conservation Ass'n v. Alameda*, 264 Cal.App.2d 284, 289 (1968).

B. Statement Of Facts

1. The Regulatory Framework

The Coastal Act of 1976 (Cal. Pub. Resources Code, § 30000 et seq.) [3/] was enacted by the Legislature as a comprehensive scheme to govern land use planning along the entirety of the California coastal zone. Recognizing that the coastal zone "is a distinct and valuable natural resource," the protection of which is of "paramount concern" to both the "state and the nation," the Legislature concluded that it was necessary to enact legislation that would "prevent its deterioration and destruction" but at the same time allow that further "carefully planned" development so "essential to the economic and social well-being of the people of this state." (§ 30001.)

Both local land use planning and enforcement as well as the continuing oversight of the California Coastal Commission are relied upon to achieve these goals. All local governments lying in whole or in part within the coastal zone must prepare and submit to the Commission a local coastal plan (LCP) (§ 30500 (a)). The LCP includes the government's land use plan, implementing zoning ordinances, and zoning district maps for that portion of the coastal zone within its bounds (§ 30108.6). Once certified by the Commission, it provides the framework for regulating development within this area (see §§ 30600 (a) & (d); 30604 (b)).

San Mateo's LCP was certified by the Commission in

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3. Unless otherwise indicated, all further statutory references are to the California Public Resources Code.

October 1980 and went into effect in April 1981 (CT 105-106). The land use policies relevant to plaintiffs' property are set forth in the agriculture component of the LUP. The zoning regulations which implement those policies are contained in the county's Planned Agricultural District (PAD) ordinance. (CT 58, 93, 336.) [4/]

Under the county's program, development of agricultural lands is regulated through controls on both the nature and density of allowable uses. The uses allowed, as of right or pursuant to permit, on land classified as prime agricultural land include: (1) agriculture; (2) non-residential development customarily considered accessory to agricultural uses, such as barns, sheds, stables, and the like; (3) greenhouses and nurseries; (4) repairs and additions to existing single family residences; (5) single family residences; (6) farm labor housing; (7) public recreation (i.e., shoreline access trails); and (8) on-shore oil and gas exploration, production and minimum necessary related storage. (CT 107-108; LUP Policy No. 5.5; PAD §§ 6352, 6353.)

On land classified as merely suitable for agriculture, the uses allowed include, in addition: (9) commercial recreation, such as country inns, stables, and riding academies; (10) wineries; (11) multi-family residences, if for affordable housing; (12) schools; (13) fire stations; (14) aquaculture activities; (15) timber harvesting and commercial wood lots; (16) agriculture processing plants;

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4. For the full text of the Agricultural Component of the LUP and of the PAD ordinance, see CT 144-153 and CT 154-170. The provisions of PAD ordinance cited herein are reprinted verbatim in the Appendix.

(17) dog kennels and breeding facilities; (18) dairies; and (19) uses ancillary to agriculture. (CT 107-108; LUP Policy No. 5.6; PAD §§ 6352, 6353.)

The maximum density of residential or non-agricultural development permissible on a given owner's property is primarily a function of the maximum number of separate legal parcels into which his property may be further divided. (CT 109; PAD §§ 6351.J, 6356.) This, in turn, is a function of the number of density credits attributable to the property, each density credit being the equivalent of one new parcel. (Ibid.) [5/]

A sliding scale density analysis -- which takes into account such things as the amount of prime agricultural soils, the land's location relative to all weather roads, fault zones and the like, its slope, and its susceptibility to land slides -- is used to determine the total number of density credits attributable to any given property. (PAD § 6356.) As a general rule, the greater the number and severity of these constraints, the lower the development potential (CT 109). However, all legal parcels -- no matter how small --are entitled to at least one such credit, and larger parcels may accumulate anywhere from one credit per 40 acres to one credit per 160 acres (CT 109; PAD § 6356). For example, the owner of a 160 acre parcel would be entitled to at least one and possibly as many as 4 density

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5. There are two exceptions to these rules: (1) farm labor housing is allowed without limit upon a showing of need; and (2) a property owner may build up to four dwellings intended for low to moderate income persons or families, without regard to the number of density credits attributable to his property. (CT 109; LUP Policy No. 3.26; PAD § 6356.)

credits, and, since each credit equals a new parcel on which, for example, a new single family residence may be built, this means that he could build between one and four new single family residences on his land (CT 109). And owners like petitioners, who have both a 160 acre parcel and a contiguous 112 acre parcel, could build between two and seven new single family dwellings.

2. Measure A

Measure A is an initiative ordinance adopted by County voters in November 1986 (CT 77-78) which contains 48 minor and 5 major amendments to the land use portion of the County's LCP.

The major amendments provide for: (1) allowance of additional land uses in rural areas; (2) bonus density credits for the creation of new agricultural water storage improvements; (3) transfer of density credits for parcels whose only developable area is completely covered by prime agricultural land; (4) voter approval of amendments to certain identified policies, where the effect of the proposed amendment would be to make the policy less restrictive; and (5) extension of the existing policy on on-shore energy facilities to prohibit the development on-shore of facilities to serve off-shore gas, as well as oil, facilities. (See Request for Judicial Notice On Appeal, Item 1, pp. 2-3.) [6/]

The minor amendments generally consist of non-substantive editorial changes to existing land use policies and/or a revision identifying the policy as one to which

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6. The Court of Appeal issued an order granting this request (hereafter "Request for Judicial Notice) on November 8, 1988.

the major amendment concerning voter approval would apply. (Request for Judicial Notice, Item 2, at p. 2.) [7]

The County submitted the measure to the Commission for certification soon after its enactment (see § 30514), but because of a noticing defect, it was not formally filed until March of 1987 (CT 248). At its December, 1987 meeting, the Commission approved both the 48 minor amendments and the major amendment generally prohibiting development of on-shore facilities to serve off-shore gas development but rejected the four remaining major amendments. The measure was then returned to the County along with suggested modifications to the rejected amendments which, "if adopted and transmitted" to the Commission, could lead to their certification. (Request for Judicial Notice, Item 4, pp. 1-3; § 30512(b).)

Following hearings held on January 19 and February 2, 1988, the County decided to accept the Commission's certification of the 48 minor amendments and one major amendment approved as submitted, and to accept two of the four remaining major amendments as modified, but resolved to send the other two -- i.e., the bonus density and density transfer amendments -- back to the Commission with a request that they be approved in the form originally submitted (Request for Judicial Notice, Items 2; 3; and 4, p. 2.).

This was done on February 8, 1988. (Request for Judicial Notice, Item 3.) The Commission heard the matter at its March 22, 1988 meeting, and, by a split vote,

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7. For the full text of Measure A, see CT 79-88. Measure A is also reprinted in Petitioners' Appendix, at pages 32-92.

granted the County's request. (Request for Judicial Notice, Item 5.)

Certification of Measure A by the Coastal Commission thus was not completed until some 18 days after the trial court granted summary judgment in this case.

3. Petitioners' Property

The undisputed, material facts regarding petitioners' property may be summarized as follows.

(a) Description

During the last quarter of 1978, petitioners purchased approximately 272 acres of land lying along Purissima Creek Road in San Mateo County (CT 1, 334-335). Their lands are located between 1-1/2 to 2 miles inland from the sea (CT 1, 321), and lie within the coastal zone, as that zone is depicted on the maps adopted by reference by the Legislature (CT 4, 335).

None of petitioners' lands are "significant estuarine, habitat, or recreational areas" and all lie "inland" of "the first major ridgeline paralleling the sea" (CT 4).[8/] Finally, their property is "ideal" for residential use (CT 321).

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8. Defendants stipulated to the truth of these allegations solely for purposes of their summary judgment motions (CT 231; Reporters Transcript for January 6, 1988 Hearing on Defendants' Motions for Summary Judgment, p. 2 et seq.). Although petitioners have suggested otherwise, this is an entirely proper procedure under California law. (See, e.g., *Rowe v. Wells Fargo Realty* 166 Cal.App.3d 310 (1985); *Barnett v. Delta Lines, Inc.* 137 Cal.App.3d 674, 682 (1982); *Sparks v. City of Compton* 64 Cal.App.3d 592 (1976)).

(b) Permit History

Petitioners have applied for only one coastal development permit since they bought their property (CT 336, 337). This occurred in 1978 when they applied for a permit to place a mobile home on their property to house farm labor (CT 336). The regional Coastal Commission granted their application and issued the permit (76, 94, 336). It has since been renewed by the County, most recently on October 15, 1987 (CT 94). In addition, leaseholders of 27.8 acres of petitioners' property applied, in 1981, for a coastal development and stable permit to locate a commercial horse training operation on their acreage. The County approved their application in 1982 and granted an extension on the permit in 1983 (CT 76-77, 336).

In 1984, petitioners asked the County to determine the number of existing legal parcels contained within their 272 acres (CT 77, 337). The County informed them that their property presently consists of only two such parcels, one containing approximately 160 acres and one containing approximately 112 acres. The County explained that they might be able to subdivide their property but that a density analysis would be required to determine the exact number of potential parcels and enclosed with the letter "an application, fee schedule, and a copy of the PAD ordinance explaining how density is determined on large parcels." (CT 77, 101-102.)

Despite this invitation, petitioners did not apply for a density credit determination until December 20, 1987, almost 5 months after this action was filed. (CT 320.)

The County did not complete the analysis until after defendants motions for summary judgment were heard.

(See Reporters Transcript for March 1, 1988 Hearing on Plaintiffs' Motion to Vacate, p. 2 (hereafter "RT").) However, the results of its analysis were reported to the court before judgment was entered (RT 2; CT 565). The County concluded that their property was entitled to no more than four density credits. (RT 2, 4; CT 556.) "The number of density credits" attributable to their property can, however, still be decreased "depending on site specific factors." (CT 323.)

REASONS WHY THE PETITION SHOULD BE DENIED

I.

PETITIONERS' JUST COMPENSATION CLAIM DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION: THE COURT BELOW CORRECTLY APPLIED SETTLED FEDERAL PRECEDENT IN REJECTING THIS CLAIM ON RIPENESS GROUNDS

Petitioners' just compensation claim constitutes a misguided attempt to take advantage of the United States Supreme Court's holding, in *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304 (1987), that a regulatory taking requires payment of just compensation, even if the taking is temporary. Unfortunately, in their rush to the courthouse, petitioners failed to stop and consider whether they had a ripe claim. As the court below correctly recognized, settled federal precedent establishes that they do not.

This Court has confronted questions concerning the ripeness of regulatory taking claims on several occasions in recent years, and its decisions in those cases precisely define the circumstances that must be present before a court may properly entertain such a claim. See *Agins v. Tiburon*, 447 U S. 255 (1979) (hereafter *Agins* (U.S.); *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985) (hereafter *Williamson*); *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340 (1986) (hereafter *MacDonald*).

As this Court has explained on numerous occasions, the central question posed by such claims is whether the regulation at issue goes "too far." However, as a general rule a court cannot know just how far a regulation goes until it has been applied; that is, until the appropriate planning authorities have made a final and authoritative decision regarding "the **type and intensity** of development legally permitted on the subject property." Consequently, a regulatory taking claim brought in advance of such decision is ordinarily premature. *MacDonald*, *supra*, 477 U.S. at 348 (emphasis added); accord *Williamson*, *supra*, 473 U.S. at 187; *Agins*(U.S.), *supra*, 447 U.S. at 260.

The sole exception to this rule occurs in those rare cases where it is evident on a regulation's face that it goes "too far"; that is, where there is no possibility that the regulation can be constitutionally applied. *Agins* (U.S.), *supra*, 447 U.S. at 260; *Lake Nacimiento Ranch v. San Luis Obispo County* 830 F.2d 977, 981-982 (9th Cir.), mod. 841 F.2d 872 (9th Cir. 1987); *Martino v. Santa Clara Valley Water Dist.* 703 F.2d 1141, 1146-1147 (9th Cir.), *cert. denied*, 464 U.S. 847 (1983). Claimants, however, face an "uphill battle in making a facial attack on [a

regulation] as a taking." *Keystone Bituminous Coal Ass'n. v. DeBenedictis*, 480 U.S.470 (1987). In this case, the court below correctly concluded that this hill was fatally steep.

The test to be applied in considering a facial challenge is straightforward. A statute regulating the uses that can be made of property effects a taking only if it does not substantially advance legitimate state interests or denies an owner all economically viable use of his land. *Agins* (U.S.), *supra*, 447 U.S. at 260.

The regulations in issue easily survive scrutiny under this test. That the regulations substantially advance legitimate governmental goals is clear. They are designed to protect the coastal zone -- a distinct and valuable natural resource of importance to both the people of this state and to the nation (§ 30001) -- from the ill effects of unplanned urbanization. Such governmental purpose has long been recognized as legitimate. See *Agins* (U.S.), *supra*, 447 U.S. at 260-262 (approving scenic zoning); *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 129 (1978) [approving landmark preservation]; *Ybarra v. City of Los Altos Hills* 503 F.2d 250 (9th Cir. 1974) (approving preservation of the rural environment).

Moreover, petitioners' own declarations establish that the regulations at issue do not prevent beneficial use of their land. They concede that their lands "are ideal for residential development" (CT 321). Given this and the fact that the regulations on their face permit them to build between two and seven new residences on their property, as well as some 18 other possible uses, it quickly becomes evident that they have not been denied all "economically viable use" of their land. (See *Agins* (U.S.),

supra, 447 U.S. at 260; *Lake Nacimiento Ranch v. San Luis Obispo County*, *supra*, 830 F.2d at 981.)

Since the regulations in issue are not facially invalid, plaintiffs inverse claim can be maintained, if at all, only as an "as applied" challenge. As a result, in order to obtain a summary judgment dismissing this claim on ripeness grounds, all respondents had to demonstrate was that the requisite final decision regarding the "**type and intensity**" of development permissible on their property had not been made. Applying settled precedent to the unique facts of this case, the court below correctly concluded that this was no obstacle at all.

To establish such a final decision, a claimant must be able to show: (1) that a development plan he submitted was rejected; and (2) that his subsequent request for a variance was denied. (*Williamson*, *supra*, 473 U.S. at 188; *Kinzli v. City of Santa Cruz*, *supra*, 818 F.2d at 1453; *Lake Nacimiento Ranch Co. v. County of San Luis Obispo*, *supra*, 830 F.2d 977.) Even this will not suffice if the rejected plan was "exceedingly grandiose," since the "[r]ejection of [such a] plan does not logically imply that less ambitious plans will receive similarly unfavorable reviews." *MacDonald*, *supra*, 477 U. S. at 353, n.9; see also *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 136-137 (1978).

No extended discussion is required to establish that petitioners have not and can not meet these requirements. No allegation of rejected development plans appears in their complaint, and the undisputed facts establish that there have been none. To the contrary, the only two development proposals submitted for their property were both approved and the necessary permits issued. Thus

they cannot show that the requisite final decision as to the **type** of development permissible on their property has been made.

Nor can they establish the necessary final decision as to the **intensity** of development permissible. Their belated request for a density analysis does not establish this even though they obtained the results prior to entry of the summary judgment. As the declaration of their own witness, the very man "responsible for the introduction of the concept of density analysis into [the] County['s] planning law," reveals, the density analysis which plaintiffs obtained does not constitute a final decision regarding the intensity of development that will actually be permitted on their property: rather "[t]he number of density credits can [still] be decreased depending on site specific factors" (CT 323). Petitioners thus remain very nearly as far from a final determination regarding the intensity of development permissible on their property as they were on the day they filed this suit.

Finally, although petitioners' argued otherwise, the court below, again applying settled federal precedent, properly concluded that petitioners cannot escape their ripeness dilemma by resort to the futility doctrine. This refuge is denied those who, like they, have not filed even one meaningful application for a development project. (*Kinzli v. City of Santa Cruz*, *supra*, 818 F.2d at 1454-1455; *Lake Nacimiento Ranch Company v. County of San Luis Obispo*, *supra*, 830 F.2d 977, 980.)

II

PETITIONERS' VAGUENESS CHALLENGE ALSO FAILS AS A SUBSTANTIAL FEDERAL QUESTION: ANY AMBIGUITY IN THE STATUTE GENERALLY DESCRIBING THE BOUNDARIES OF THE COASTAL ZONE WAS CURED BY THE INCORPORATION OF MAPS SHOWING ITS PRECISE LOCATION.

Subdivision (a) of section 30103 defines the coastal zone as follows:

> 'Coastal zone' *means that land and water area of the State of California* from the Oregon border to the border of the Republic of Mexico, *specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of 1975-1976 Regular Session enacting this division*, extending seaward to the state's outer limit of jurisdiction...and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less and in developed urban areas the zone generally extends inland less than 1,000 yards. . . . (*Emphasis added.*)

Section 17 of chapter 1330 of the Statutes of 1976, as amended by section 29 of chapter 1331 of the Statutes of 1976 (hereafter "Section 17"), in turn provides:

> The coastal zone, *as generally defined* in Section 30103. . . *shall* include the land and water areas as shown on the map prepared by the California Coastal Zone Conservation Commission titled "California Coastal Zone" dated August 11, 1976, and on file with the Secretary of State. (*Emphasis added.*

While petitioners' concede that their property lies within the coastal zone as it is depicted on these maps, they contend that it is not within the coastal zone as it is otherwise, more generally described in section 30103. Accordingly, in a vain attempt to escape the strictures of the regulations in issue, petitioners sought below to have the maps declared invalid under state law or, failing this, a declaration that the alleged conflict between the language of the statute and the boundary shown on the maps renders section 30103 unconstitutionally vague. The lower courts properly rejected both these challenges. Understandably, only the latter challenge is repeated here. As will be seen, however, settled precedent establishes that it is wholly without merit and thus is equally underserving of this Court's attention.

Petitioners' own declarations reveal that their allegation that there is a conflict between the general language of section 30103 and the coastal zone boundary shown on the maps for San Mateo County rests on nothing more than their lay opinion that their property itself is not a significant estuarine, habitat, or recreational area and that

a 120' and an 800' ridgeline lie seaward of their property (See CT 32.)

In truth the only question these facts pose is: whose opinion on the question whether a 120' or an 800' ridgeline is a "*major* ridgeline" within the meaning of the statute and on the question whether their property lies "*in* [a] significant estuarine, habitat, or recreational area" is the dispositive one? The Legislature's or petitioners'? The answer seems evident: it is the Legislature's. It was the legislature that adopted the maps specifically fixing the boundary inland of plaintiffs' property and beyond the 1,000 yard line and it may be presumed that the Legislature had evidence before it that would warrant its action. See generally 58 Cal.Jur.3d, Statutes § 49 (1980). Accordingly, in the absence of any fatal ambiguity in the statute, it seems clear that plaintiffs must do as others have done and take their case for relief there.

Unfortunately for petitioners, no such ambiguity is present here. While certain of the terms used in section 30103 -- such as "first major ridgeline" -- are amenable to more than one interpretation, they are no more ambiguous than many other terms upheld in the face of such challenges

True, due process requires that an enactment be declared void for vagueness if its provisions and requirements are not clearly defined. *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972). But, it is equally true that statutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears. See, e.g. *Collins v. Riley*, 24 Cal.2d 912, 915 (1944). For this reason, vagueness challenges are rejected out of hand unless "men of common intelligence must

necessarily guess at [a statute's] meaning and differ as to [its] application." *People v. Smith*, 35 Cal.3d 798, 809 (1984). Reasonable certainty is all that is required; mere difficulty in determining a statute's meaning will not render it nugatory. *People v. Anderson*, 29 Cal.App.3d 551, 561 (1972).

Section 30103 easily passes muster under this standard. Indeed, the requisite "reasonable certainty" necessary to sustain it is provided by its reference to the maps. This reference effectively tells the reader that, in order to understand precisely what the general terms mean, he need only look there.

That this is what the Legislature intended can hardly be disputed. In a formal opinion issued nearly seven years ago, the California Attorney General concluded that the Legislature meant the landward boundary of the coastal zone depicted on the maps to prevail over the generalized description set forth in that section. 63 Ops.Cal.Atty.Gen. 107 (1980). After examining the express language of section 30103 and section 17, the Attorney General found that the language in the former section to the effect that the coastal zone extends generally 1,000 yards from the mean high tide line, or in certain areas five miles from that line or to the first major ridgeline paralleling the sea is "merely descriptive of the rationale used by the Legislature in drawing the particular line on the maps." *Id.*, at 109.

As the opinion notes this conclusion finds support in various other provisions in the Coastal Act concerning the location of the boundary. Subsequent to its approval of the original maps, the Legislature has made several changes in the landward boundaries of the coastal zone.

For example, sections 30150 through 30176 all concern amendments to the inland boundary of the coastal zone at various points along the coast. In each of these instances, the Legislature amended the coastal zone boundary by amending the maps it had previously adopted, not by amending the general description of the coastal zone.

The Legislature's intent to define the coastal zone by its adopted maps -- even where those maps show an interior boundary that is arguably further inland than the boundary that would result from application of the general language set forth in section 30103 -- is further confirmed by its repeated rejection of legislation aimed at moving the inland boundary in the Santa Monica Mountains area seaward to what some contended was the "first major ridgeline paralleling the sea." (See CT 392.)

Principles of statutory construction also suggest that the boundary shown on the maps be the boundary that prevails in cases of conflict with the language of section 30103. The maps describe the boundary more specifically than the descriptive language and, as a general rule, the Legislature's more particularized expressions on a subject prevail over its more general ones. Civ. Code, § 3534; see generally 58 Cal.Jur.3d, *supra*, § 109, at pp. 488-491.

Finally, there no doubt but that giving effect to the maps accords with the legislative intent in this very case. Indeed, petitioners' claim that the Legislature intended to fix the boundary of the coastal zone at the 1,000 yard line in San Mateo County demonstrates only that they have not bothered to review the legislative history of the Act.

One of the more interesting things this history reveals is that, in the final days leading up to the adoption of the Act, **the Assembly specifically rejected a proposed amendment to the Act that would have fixed the boundary of the San Mateo coastal zone at the 1,000 yard line.**

The amendment -- proposed on the floor of the Assembly on August 13, 1976 by Mr. Arnett -- would have changed section 30103 (a) as it now reads by adding at the end of that section the following sentence: "Notwithstanding the foregoing provisions of this section, the coastal zone in San Mateo County shall not extend more than 1,000 yards inland from the mean high tide line of the sea." Assem. Journal (1975-1976 Reg. Sess.) August 13, 1976, p. 19057. However, the amendment was rejected immediately after being read, by a vote of 36 to 29. *Ibid.*

The post-enactment history of the Act is equally instructive. The Legislature amended various segments of the coastal zone boundary in 1979, deleting areas previously incorporated in some instances and adding areas previously excluded in others. See § 30150 (adopting by reference maps showing these adjustments). Although San Mateo County was one of the counties affected by these amendments, it the only change the Legislature made the County's coastal zone boundary was to move it "seaward to the five-mile limit" in the area of the Butano Creek watershed. See Pub. §§ 30150, 30156.

Suffice it to say that the fact that the Legislature has twice refused to avail itself of an opportunity to move the San Mateo boundary seaward to the 1,000 yard line strongly suggests that that is not where it wishes the boundary located. See *People v. Weidert*, 39 Cal.3d 836,

846-847 (1985); *Rich v. State Board of Optometry*, 235 Cal.App.2d 591, 607 (1965).

III

PETITIONERS' EQUAL PROTECTION CHALLENGE TO MEASURE A WAS PROPERLY REJECTED AS UNRIPE.

In their third cause of action, the petitioners' challenged the constitutionality of the *entirety* of both the County's LCP and Measure A on vagueness grounds and the validity of Measure A alone on sundry other grounds. To these claims, they later added yet another constitutional challenge to Measure A founded on the equal protection clause. (See *supra*, fn. 2.) The Court of Appeal affirmed the trial court's dismissal of all of these claims as unripe; it did not reach the merits of any of them, including the equal protection challenge. (See Pet.App., at 29-30.)

This result is entirely proper. As the Court of Appeal noted, "[c]ertification of Measure A by the Coastal Commission was not completed until March 22, 1988, 18 days after the trial court granted summary judgment. The lack of ripeness under these circumstances is obvious." (Pet.App. at 29.)

IV

CONCLUSION

For these reasons, respondents respectfully request that the petition for a writ of certiorari be denied.

DATED: December 21, 1989

Respectfully submitted,

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(Appendices follow)

APPENDIX A

HAPTER 21A. "PAD" (PLANNED AGRICULTURAL DISTRICT).

§ 6351.J. Density Credits

The maximum number of land divisions permitted for a parcel computed in accordance with Section 6356. For Public and Commercial Recreation uses, each density credit equals 630 gallons per day of water. For all other uses, each density credit equals 315 gallons per day of water. Credits may be combined for uses on a single parcel if the number of land divisions permitted is reduced accordingly; however, only one credit shall be assigned to an agricultural parcel. Only one dwelling unit or non-agricultural use shall be permitted per parcel.

§ 6352. USES PERMITTED

The following uses are permitted in the PAD:

A. On Prime Agricultural Lands

1. Agriculture.

2. Non-residential development customarily considered accessory to agricultural uses.

3. Soil dependent greenhouses and nurseries provided that a soil management plan is prepared showing how open prime soils on the site will be preserved and how soils will be returned to their original condition when operations cease.

4. Repairs, alterations, and additions to existing single-family residences.

B. On Land Suitable for Agriculture and Other Lands

1. Agriculture.

2. Non-residential development customarily considered accessory to agricultural uses.

3. Dairies.

4. Greenhouses and nurseries.

5. Repairs, alterations, and additions to existing single-family residences.

§ 6353. USES PERMITTED SUBJECT OT THE ISSUANCE OF A PLANNED AGRICULTURAL PERMIT.

The following uses are permitted in the PAD subject to the issuance of a Planned Agricultural Permit, which shall be issued in accordance with the criteria set forth in Section 6355 of this Ordinance.

Applications for Planned Agricultural Permits shall be made to the County Planning Commission and shall be considered in accordance with the procedures prescribed by the San Mateo County Zoning Ordinance for the issuance of use permits and shall be subject to the same fees prescribed therefore.

A. On Prime Agricultural Lands

1. Single-family residences.

2. Farm labor housing

3. Public recreation/shoreline access trail (see Section 6355.D.3 and 4.).

4. Non-soil dependent greenhouses and nurseries if no alternative building site on the parcel exists.

5. Onshore oil and gas exploration, production, and minimum necessary related storage subject tot he

issuance of an oil well permit, except that no wells shall be located on prime soils.

B. On Lands Suitable for Agriculture and other Lands

1. Single-family residences.

2. Farm labor housing.

3. Multi-family residences if for affordable housing.

4. Public recreation/shoreline access trail (see Section 6355.D.3 and 4.)

5. Schools.

6. Fire stations.

7. Commercial recreation.

8. Aquacultural activities.

9. Wineries: provided that the annual storage capacity shall not exceed 10,000 gallons, the annual fermentation capacity shall not exceed 5,000 gallons, and the annual bottling shall not exceed 2,500 cases of wine; the only retail sales permitted will be those of wines produced on the premises.

10. Timber harvesting and commercial wood lots subject to the issuance of a timber harvesting permit.

11. Onshore oil and gas exploration, production,a nd storage subject to the issuance of an oil well permit.

12. Agricultural processing plants.

13. Uses ancillary to agriculture.

14. Dog kennels and breeding facilities.

15. Scientific/technical research and test facilities,d provided a Planned Agricultural Permit shall only be issued for this use upon the following findings:

a. That the use is of a low-intensity nature with minimum of permanent construction required, no permanent on-site personnel or permanent on-site

vehicles.

b. That the nature of the operation requires an open, isolated, and radio frequency interference-free environment.

c. That no manufacturing or industrial activities are involved.

d. That the size, location and design of any proposed facility as well as level of activity on the site are compatible with the policies of the Local Coastal Plan.

e. That the proposed use does not impair existing or potential agricultural uses on the site or on surrounding properties. The applicant shall demonstrate how agriculture will not be impaired, including provisions for leasing portions of the site for agricultural uses.

f. That the proposed use or facility does not create a potential for any health or safety hazard.

g. That the applicant for such a facility shall describe the manner in which other users might be accommodated in sharing the proposed facility so as to avoid the duplication of such facilities in the future.

h. That the applicant demonstrate that no feasible sites exist in the RM, RM/CZ, TPZ, or TPZ/CZ zones for the proposed facility.

§ 6355. SUBSTANTIVE CRITERIA FOR ISSUANCE OF A PLANNED AGRICULTURAL PERMIT.

It shall be the responsibility of an applicant for a Planned Agricultural Permit to provide factual evidence which demonstrates that any proposed land division or conversion of land from an agricultural use will result in uses which are consistent with the purpose of the Planned

Agricultural District; as set forth in Section 6350. In addition, each application for a division or conversion of land shall be approved only if found consistent with the following criteria:

A. General Criteria

1. The encroachment of all development upon land which is suitable for agricultural use shall be minimized.

2. All development permitted on a site shall be clustered.

3. Every project shall conform to the Development Review Criteria contained in Chapter 20A.2 of the San Mateo County Ordinance Code.

B. Water Supply Criteria

1. The existing availability of a potable and adequate on-site well water source for all non-agricultural uses is demonstrated.

2. Adequate and sufficient water supplies needed for agricultural production and sensitive habitat protection in the watershed are not diminished.

3. All new non-agricultural parcels are severed from land bordering a stream and their deeds prohibit the transfer of riparian rights.

C. Criteria for the Division of Prime Agricultural Land

1. Prime Agricultural Land which covers an entire parcel shall not be divided.

2. Prime Agricultural Land within a parcel shall not be divided unless it can be demonstrated that existing or potential agricultural productivity of all resulting parcels would not be diminished.

3. Prime Agricultural Land within a parcel will not be divided when the only building site would be on

such Prime Agricultural Land.

D. Criteria for the Conversion of Prime Agricultural Lands

Prime Agricultural Land within a parcel shall not be converted to uses permitted by a Planned Agricultural Permit unless it can be demonstrated that no alternative building site exists on a parcel for:

1. A single-family residence.
2. Farm labor housing.
3. A recreation facility on land owned by a public agency before the effective date of this Ordinance, and

a. The agency, as a condition of approval of the Planned Agricultural Permit, executes a recordable agreement with the County that all prime agricultural land and other land suitable for agricultural which is not needed for recreational development or for the protection and vital functioning of a sensitive habitat will be permanently protected.

b. The agency, whenever legally feasible, agrees to lease the maximum amount of agricultural land to active farm operators on terms compatible with the primary recreational and habitat use.

4. A shoreline access trail.
5. Permissible onshore oil and gas exploration, production, and storage facilities.

E. Criteria for the Division of Lands Suitable for Agriculture and Other Lands

Lands suitable for agriculture and other lands shall not be divided unless it can be demonstrated that existing or potential agricultural productivity of any resulting agricultural parcel would not be diminished.

F. Criteria for the Conversion of Lands Suitable for Agriculture and Other Lands

All lands suitable for agriculture and other lands within a parcel shall not be converted to uses permitted by a Planned Agricultural Permit unless all of the following criteria are met:

1. All agriculturally unsuitable lands on the parcel have been developed or determined to be undevelopable, and

2. Continued or renewed agricultural use of the soils is not capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors (Section 30108 of the Coastal Act), and

3. Clearly defined buffer areas are developed between agricultural and non-agricultural uses, and

4. The productivity of any adjacent agricultural lands is not diminished, including the ability of the land to sustain dry farming or animal grazing, and

5. Public service and facility expansions and permitted uses do not impair agricultural viability, either through increased assessment costs or degraded air and water quality, and

6. In addition, for parcels adjacent to urban areas, the viability of agricultural uses is severely limited by conflicts with urban uses, and the conversion of land would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

§ 6356. MAXIMUM DENSITY OF DEVELOPMENT.

In the Planned Agricultural District, for purposes of determining the maximum total number of density credits accumulated on any parcel, the following system shall be used:

The total parcel shall be compared against the criteria of this Section in the order listed. Any segment of a parcel to which a criterion first applies shall be allowed a maximum accumulation of that density. Once considered under a criterion, a segment of the parcel shall not be considered under subsequent criteria. When the applicable criteria have been determined for each of the areas, any portion of the parcel which has not yet been assigned a maximum density accumulation shall be assigned a density of 1 density credit per 40 acres.

The sum of densities accrued under all applicable categories shall constitute the maximum density of development permissible under this Section. If the fractional portion of the number of density credits allowed is equal to or greater than .5, the total number of density credits allowed shall be rounded up to the next whole density credit. If the fraction is less than .5, the fractional unit shall be deleted. All legal parcels shall accumulate at least 1 density credit.

In order to equate the density accrued for different uses permitted in the PAD, one density credit shall equal 630 gallons/day of water for Public and Commercial Recreation uses, and 315 gallons/day of water for all other uses. Any uses requiring more than 630 or 315 gallons/day of water shall consume the number of additional whole credits needed. When a Master Land Division Plan is approved, more than one density credit may be assigned to a new non-agricultural parcel if the

number of permitted divisions is reduced accordingly; however, only one credit may be assigned to a new agricultural parcel.

The provisions of this Section will not apply to agriculture, farm labor housing, or affordable housing as defined in Policy 3.26 of the Local Coastal Program, or other structures considered to be accessory to agriculture under the same ownership.

A. Prime Agricultural Lands

One density credit for that portion of a parcel which is Prime Agricultural Land as defined in Section 6351. For parcels with less than 160 acres of such land, density accumulation is proportioned on the basis of 1 credit per 160 acres.

B. Lands with Landslide Susceptibility

One density credit for that portion of a parcel which lies within any of the three least stable categories (categories V, VI, and L) as shown on the U.S. Geological Survey Map MF 360, "Landslide Susceptibility in San Mateo County." For parcels with less than 160 acres of such land, density accumulation is proportioned on the basis of 1 credit per 160 acres.

C. Land with Slope 50% or Greater

One density credit for that portion of a parcel which has a slope 50% or greater. For parcels with less than 160 acres of such land, density accumulation is proportioned on the basis of 1 credit per 160 acres.

D. Remote Lands

One density credit per 160 acres for that portion of a parcel over 1/2 mile from an existing, all-weather, through public road which was in existence before the effective date of this Ordinance.

E. Land With Slope 30% But Less Than 50%

One density credit per 80 acres for that portion of a parcel which has a slope in excess of 30% but less than 50%.

F. Lands Within Rift Zones or Active Faults

One density credit per 80 acres for that portion of a parcel which is located within the rift zone or zone of fractured rock of an active fault as defined by the U.S. Geological Survey and mapped on USGS Map MF 355, "Active faults, probably active faults, and associated fracture zones in San Mateo County."

G. Lands Within Floor Hazard Areas

One density credit per 60 acres for that portion of a parcel falling within a Flood Hazard Area in accordance with the provisions of Chapter 35.5 of this Part and using the documents identified in Section 6824.2 of that Chapter, as appropriate. Where previous actions have eliminated such flood areas, the provisions of this subsection shall not apply.

H. Land With Slope 15% But Less Than 30%

One density credit per 60 acres for that portion of a parcel with a slope in excess of 15% but less than 30%.

I. Land Within Agricultural Preserves or Exclusive Agricultural Districts

One density credit per 60 acres for that portion of a parcel within agricultural preserves or the exclusive Agricultural Districts as defined in the adopted Resource Conservation Area Density Matrix policy.

J. All Other Lands

One density credit per 40 acres for that portion of a parcel not within the above areas.

PROOF OF SERVICE BY MAIL

State of California
County of San Francisco

I am a citizen of the United States and a resident of or employed in the City of San Francisco, County of San Francisco; I am over the age of 18 years and not a party to the within action; my business address is 455 Golden Gate Avenue, San Francisco, California 94102.

On December 21, 1989, I served the within Respondents' Brief in Opposition on all parties by placing three true copies thereof enclosed in sealed envelopes, with postage thereon fully prepaid, in the United States Post Office mail box at San Francisco, California, addressed as follows:

DONALD M. LAYNE 200 Clock Tower Place Suite B-103 Carmel, California 93923	MICHAEL B. MURPHY Deputy County Counsel 401 Marshall Street Redwood City, CA 94063
Counsel for Petitioners	Counsel for Respondent County of San Mateo

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 21, 1989, at San Francisco, California.

Susie Fong

SUSIE FONG